



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201001024**
Release Date: 1/8/10
Date: 10/14/2009
UIL Code: 501.03-00
501.03-05, 501.03-15, 501.03-30

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120
Tax Years:
All

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 8/6/2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = Former Board Member
B = Replacement Board Member
C = Individual
D = Individual
M = State
Y = Country
Z = Foreign School
x = Date

UIL Numbers:

501.03-00
501.03-05
501.03-15
501.03-30

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

PRIMARY ISSUE:

Do you qualify for exemption under IRC 501(c)(3)? No, for the reasons described below.

ALTERNATIVE ISSUE:

In the event that you were found to qualify for tax exempt status under IRC 501(c)(3) on appeal, would you be eligible to receive tax deductible donations under IRC 170? No, for the reasons described below.

FACTS:

You were incorporated in the United States on date X, pursuant to the nonprofit corporation statutes of the State of M. Your articles state that you were formed to pay stipends to students

attending the Z school, which is a foreign organization located in country of Y. Your corporate name is Friends of Z.

The description of activities in your application for recognition of exemption confirmed that you pay the living expenses of students who attend the foreign school Z. You asserted that you do not directly support the foreign school Z but that you directly support Z's students. You stated that your stipends are based on the financial need, academic performance, attendance and graduation potential of Z's students. You said that those eligible for your stipends are full time students of the foreign school Z who maintain a good academic record and who are on track to graduate from the Z school. You stated that you review and approve all grants and have control and discretion as to the use of your contributions. However, you also stated that you do not have an application form for the Z students to complete and you do not require the students to document their qualifications for need and/or academic merit with you in any formal way. You or Z verbally make Z's students aware of the availability of your stipends. There are 66 students now attending the foreign school Z and 41 of those students currently receive a monthly stipend from you.

You asserted that the foreign school Z did not create you, but that you instead were formed independently. You pointed out that your Articles of Incorporation do not state that you will merely receive contributions and send them at convenient intervals to be used by the foreign school Z. You also said that you do not have a foreign subsidiary. You asserted that contributions to you are not earmarked by your donors for the direct transfer to the foreign school Z.

Your initial list of board members included your board member A, who is located in the foreign country of Y. We asked if your board member A was employed by the foreign school Z. Rather than answering the question, you said that you removed person A from your board and replaced him with person B. We later asked if your former board member A works for or serves at the foreign school Z. You then stated that A oversees the students at the Z school.

Your replacement board member B is also located in the foreign country of Y. However, you stated that your replacement board member B is not employed by the foreign school Z.

We requested copies of the minutes of your board meeting at which person A resigned his position on your board and person B took his place. Article IV (6) of your Bylaws states a "director may resign at any time by giving written notice to the board." In response, you stated that you do not record minutes of your board meetings. We then asked for a statement signed by person B to indicate his willingness to serve on your board and for a copy of his resume. You responded by submitting a small piece of paper with a minimal amount of information, most of which was in a foreign language.

We asked you to provide documentation of the tax exempt status of the Z school in the foreign country of Y. You submitted a statement from a Certified Accountant in Y saying that, per his authority, the Z school is officially a non-profit organization. We then asked what authority the Certified Accountant has to make this pronouncement. In response, you submitted another document written in a foreign language. This may be a non-profit registration certificate but it is unclear to which organization this certificate pertains.

The Bylaws that you submitted with your application for exemption are not complete. There are blank spaces throughout the document. We asked you to provide complete Bylaws and a copy of the minutes of the board meeting at which the Bylaws were adopted. You responded with the statement, "I have submitted these bylaws for approximately 12 years for about 80-90 organizations. The IRS has accepted these in all cases without any questions."

Article V of the Bylaws states that your directors consist of a President, one or more Vice-Presidents, a Treasurer, and a Secretary. However, your application stated that you actually have just three directors and one Trustee. When we asked about the discrepancy between the application and the Bylaws, you stated that the titles are interchangeable.

In your initial application, you indicated that you had adopted a Conflict of Interest policy. However, you did not actually submit a copy of that document; instead you stated "Our organization does not contemplate entering into a transaction or arrangement that might benefit the private interest of an Officer or Director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace all applicable State and Federal laws governing conflict of interest applicable to non-profit and charitable organizations."

We asked you to explain your recordkeeping procedures. You responded that you "maintain a record of receipts and expenditures". We also asked what kind of controls were in place to insure that the cash gets to the Z students. You responded that "we control the cash at all times".

We asked for actual financial data for 2006. You did not respond to our request. In the same request, we asked for the names of the officers, directors and teachers at the Z school, but you did not provide that information.

In your original application for exemption, you stated that the Z students received stipends of approximately \$ each per month. However, you later stated that the Z students each received \$ per month.

The bank statements that you provided included checks written for very large amounts, such as \$ and \$. Your explanation for this was that the Z students with medical conditions may receive a higher amount than other students. However, in the same response you said that each of the 41 Z students received the exact same amount for and . Your bank statements tell another story.

One of your checks was for \$, which indicated each Z student may have received \$ at that time. Later, 3 of your checks totaling \$ were cashed at the same time, indicating that the Z students may have received \$ each at that time. On another date, 5 of your checks totaling \$ were cashed, indicating that each Z student may have received \$ at that time.

We asked how you determine that each Z student receiving a stipend is actually needy. You said that the family income must be below poverty level as established by the foreign

government of Y. We asked if you verify the income of the Z students and you said, "No. The school has this documentation".

As noted above, at one point in the development of the application, you indicated that your original board member A had been replaced. However, after that replacement happened, you said that the only two individuals that have access to your bank account are persons C and A. You further stated that only persons C and A have the authority to write checks and use your debit card and that only person A determines the amount of the checks to be written. You also said that person A cashes the checks that you write at a money exchange located in the foreign country Y, and that person A then hands out the cash to the Z students. When we asked how you ensure that the Z students receive the appropriate amounts, you said that "we hand it to them directly and we are in daily contact with them". The actual paper trail ends with person A cashing your checks in the foreign country of Y.

In our most recent correspondence we asked for the name of the individual who is responsible for the day to day control over your financial transactions. You then stated that person D controls your financial transactions. There is no prior record of person D being involved with you and he has never been listed as one of your board members, officers or trustees.

We asked you if you refer to the OFAC SDGT (Office of Foreign Assets Control Specially Designated Global Terrorist) list to determine if your foreign grant recipient is included on the list of possible terrorist activity organizations. You said that you do not refer to the OFAC list. Because you hand out cash to individuals that are not United States citizens, we then asked what process you use to ensure that you are not supporting individuals that are involved in terrorist activities. You responded that "A knows each student personally and gives the stipend directly to each one".

LAW:

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by

organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 170(a) of the Code provides, subject to certain limitations, a deduction for charitable contributions as defined in Section 170(c), payment of which is made within the taxable year.

Section 170(c)(2) of the Code defines a charitable contribution to include a contribution or gift to or for the use of a corporation, trust, or community chest, fund or foundation which is (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (D) which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 170(c)(2) of the Code further provides that a contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of paragraph 170(c)(2) only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph 170(c)(2)(B).

Section 1.6001-1(a) of the Procedure and Administration Regulations provides, in general, that any person subject to tax under subtitle A of the Code or any person required to file an information return with respect to income shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(c) of the Regulations provides that for exempt organizations, in addition to such permanent books and records required by section 1.6001-1(a) with respect to the tax imposed by section 511 on the unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements.

Section 1.6001-1(e) of the Regulations, Retention of Records, provides that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Rev. Proc. 2009-9, 2009-2 I.R.B. 256, superseding Rev. Proc. 2008-9, 2008-1 C.B. 258, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is

claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it engages or will engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the actual and anticipated sources of receipts, and the nature of actual and contemplated expenditures.

Rev. Rul. 56-304, 1956-2 C.B. 306 stated that an organization which otherwise met the requirements for exemption from Federal income tax was not precluded from making distributions to individuals, provided such distributions were made on a true charitable basis. The ruling said that organizations of this type must maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerned an exempt organization that was requested to produce a financial statement and a statement of its operations for a certain year. That organization's records were incomplete and it was unable to furnish such statements. The Service held that the failure or inability to file the required information justified the revocation of the exempt status of that organization.

Rev. Rul. 63-252, 1963-2 C.B. 101, holds that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is, in fact, to or for the use of the domestic organization, and that the domestic organization is not serving as an agent for, or conduit to, a foreign organization. The revenue ruling states that it is clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient.

Rev. Rul. 66-79, 1966-1 C.B. 48, amplifies Rev. Rul. 63-252 to provide that contributions to a domestic charity that are solicited for a specific project of a foreign charitable organization are deductible under section 170 of the Code if the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. This conclusion is reached because the contributions received by the domestic charity are regarded as for the use of the domestic organization and not the foreign organization receiving the grant from the domestic organization.

Rev. Rul. 68-489, 1968-2 C.B. 210, held that an organization did not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributed funds to nonexempt organizations, because it retained control and discretion over the ultimate use of the funds and it maintained records establishing that the funds were in fact ultimately used for section 501(c)(3) purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980) was an action for declaratory judgment pursuant to section 7428(a). The applicant had declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that no part of its net earnings inured to the benefit of private persons or was not operated for private benefit. Therefore, the organization did not qualify for exemption.

In Basic Bible Church of America v. Commissioner, 86 T.C. 110 (1986), the organization filed for a declaratory judgment with the court seeking to reverse the Service's revocation of the organization's determination letter. The case was called for trial several years later. No appearance was made by the organization at the trial. The court granted the Service's motion to dismiss the case for failure to properly prosecute. The court stated that "Petitioner's lack of diligence in prosecuting its case, coupled with petitioner's unexcused failure to appear at trial, warrants dismissal."

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was another action for declaratory judgment. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting non exempt schemes. The organization claimed that the founder had resigned and it had changed. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court ruled against the applicant, stating that it had failed to bear its burden of proof to establish that it qualified for exemption. The court said, "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant".

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the court denied exempt status. The court noted that the organization had failed to respond completely and candidly to the IRS during the administrative processing of its application for exemption. The court confirmed that an applicant may not declare what information or questions are relevant in a determination process. The court cited several other cases that upheld adverse rulings by the IRS because of the failure of the applicants to provide full and complete information on which the IRS could make an informed decision.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1900) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. The court said that whether an organization has satisfied the operational test of IRC 501(c)(3) is a question of fact.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court upheld the denial of exemption on an organization that made grants to individuals. The organization asserted that its grants were made in furtherance of a charitable purpose: to assist the poor who were in need of food, clothing, shelter, and medical attention. However, the organization was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant which was specified as either unemployment, moving expenses, school scholarship, or medical expense. The court held that this information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made in furtherance of an exempt purpose.

APPLICATION OF LAW:

Section 6001 of the Code requires organizations exempt from tax to retain records sufficient to detail their exempt function activities. To qualify for exempt status an organization must make a convincing case that it qualifies for tax exempt status under Code section 501(c)(3). An organization that is unable to demonstrate that it now has or will have in the future sufficient records to show that its operations exclusively further exempt purposes will not be found to meet the operational test under Section 501(c)(3) of the Code. Per New Dynamics Foundation, the burden is on the applicant to establish that it meets the statutory requirements.

You have provided very little information regarding how you operate. You allow the Z school which is located in the foreign country Y to make the decisions and to keep the records as to whether a student is actually needy or otherwise qualified for aid. You allow unauthorized individuals (non-board members) to control your financial operations. The criteria for your grants or the amounts of the grants did not appear to be clear or consistent from one of your responses to another. Rev. Proc. 2009-9 provides that an organization seeking exemption must fully describe all of its activities including standards, criteria, and procedures. You did not do that.

You delegated much of your authority, responsibility, and operations to other individuals and entities. You allow the foreign Z school in Y to make the determination as to who is eligible for your assistance. Any recordkeeping along these lines is only done by the foreign school Z. You allow non-board members and otherwise unauthorized individuals who have no official responsibility or obligation to report to or answer to your officers or board to control your day to day finances and to hand out cash to the Z students. You allow individuals with no official connection to your organization to write checks for your organization.

Denial of your exempt status is supported by the above cited Rev. Rul. 59-95, because you could not or would not furnish satisfactory financial statements and other necessary information such as a listing of the names of the Z school's officers, directors and teachers.

To be exempt under Section 501(c)(3), an organization must be both organized and operated for one or more exempt purposes specified in the Section. Although "exclusively" does not mean "solely" or "without exception," the presence of a single nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes, as

indicated in the above cited Better Business Bureau case. This further supports the proposed denial of your exempt status.

As stated in the above cited New Dynamics Foundation case, exemption from federal income taxation is not a right; it is a matter of legislative grace that is strictly construed. The applicant bears the burden of establishing that it qualifies for exempt status. An applicant must prove that it is organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests.

Other cases supporting our proposed denial of your exempt status along this line of reasoning are the above cited Harding Hospital, National Association of American Churches, Basic Bible Church, and Bubbling Well Church. These cases all confirm that an applicant bears the burden of proof to clearly establish that it deserves the privilege of tax exempt status. You did not meet those requirements.

Your legal name is indicative of a general purpose to assist the foreign Z school. You do not write checks directly to Z but in helping Z's students to attend, you indirectly help Z. This is a one to one foreign conduit relationship. Your donors may be certain that their donations will pass through you to the benefit of the foreign school Z. You wish to be viewed as benefiting poor students rather than benefiting the foreign school Z, but you failed to document that interpretation per the above cited Rev. Rul. 56-304.

Rev. Rul. 63-252 states that contributions to certain domestic charitable organization are deductible if it can be shown that the gift is for the use of the domestic organization, and the domestic organization is not serving as an agent for the foreign organization. The amount and frequency of the checks you write are determined by an individual that controls the foreign Z school. As a domestic entity in the United States, you have little or no control over who actually receives your cash, how much they receive or what they actually use it for.

APPLICANT'S POSITION

You stated that all contributions to you are distributed properly in accordance with Rev Rul 63-252. You also asserted that your application for tax exempt status and the deductibility of contributions are supported by cited Rev Ruls 66-79 and 68-489.

SERVICE'S RESPONSE TO APPLICANT'S POSITION:

Although you said that per Rev. Rul. 63-252, 66-79 and 68-489, you are acting with proper control and discretion, the facts depicted in the administrative file tell a different story. You were specifically formed to benefit one particular foreign school, Z. Individuals associated with Z cash your checks and hand out the money to individual with little or no documentation back to you as to the actual qualifications of the individuals or how they actually use the cash.

YOUR REQUESTS, PROTESTS AND THE SERVICE'S RESPONSE:

You responded with correspondence to our proposed denial of your application for exemption. In this letter you cited no legal precedent. You asserted that you repeatedly tried to contact the IRS agent assigned to your account. You further stated that this agent failed – repeatedly – to

respond to your initiations. You said that you submitted materials and tried to call and clarify that you had the necessary material to process the application. You further asserted that your phone messages repeatedly went unreturned and that the Service did not respond. You said that the Service rejected your request without giving you the opportunity to resolve any matters that were unclear. While you claim that telephone calls were unreturned, we have no record of these calls.

To illustrate, we have record of talking to Trustee C on several occasions and each time he only requested extensions and there were no questions asked regarding the additional information that was requested. At one point the Service called Trustee C to follow up on a request for information and he not only had no questions, but indicated that he would not be able to respond to the request and the case was closed as a Failure to Establish (FTE). After the response was received, the case was reopened we sent another request for additional information. No calls were received from Trustee C. Again, the service called Trustee C to follow up on the request for additional information. Trustee C had no questions for the service and said that he was still "waiting on the people in the foreign country of Y" so the case was closed again as an FTE.

The case was reopened again after the additional information that we requested was supplied. Trustee C called and left a message that he needed more time because he was out of town. Additional time was granted, per his request. The Service called Trustee C to let him know that it didn't appear that they would qualify for exemption. At that time the basis for denial was discussed.

After receiving the proposed denial letter, Trustee C called the agent to discuss and left a message. The agent returned his telephone call that same day. At that time the agent told Trustee C that at no time did they refuse to discuss the information requests with him and that there were no telephone calls that went unreturned. The agent then offered for Trustee C to speak to the manager and he declined. He asked that the agent put the issues that need clarification in writing that that he could respond. Therefore, we sent a letter to you requesting clarification of your issues. A month passed and no response was received. At that time the agent called Trustee C to follow up. Trustee C said that he needed "another week or two."

Two months passed after the clarification letter was sent. No response or telephone call was received and the agent again called Trustee C. He asked for the agent to fax a copy of the letter to him. Trustee C stated that he would have the response back to the agent in a couple of days. Two weeks later a fax was sent by the agent to Trustee C to remind him that his response was past due. We included a new, extended due date. Several weeks passed and you have not responded or called.

Included with your protest to our proposed denial you asserted that you did not know that the information had to be submitted in English. A basic requirement of Form 1023, as outlined in the instructions thereto, is that the Form and all of its attachments must be in English.

The other issues that you have protested include the following:

- a. The relationship between yourself and the foreign organization
- b. Your lack of board meeting minutes

- c. The service's request for financial data
- d. Determination of the "need" of the students of the scholarships/stipends you provide
- e. The non-profit status of the foreign organization that you support
- f. The discrepancy in distributions of funds to students
- g. The procedure of the distributions of funds

The protest letter from you states, in part:

"It seems clear to us that most of the questions or concerns the IRS has are based on a misunderstanding as to where the line is drawn between the organization located in the foreign country of Y and the American organization that contributes funds towards it. We empathically state, and cannot empathize enough, that the American organization seeking IRS non-profit status is completely independent of the organization located in the foreign country of Y in terms of decision-making with regards to funds donated to us. The American organization was created entirely as a separate entity and must, to fulfill the interests of its Board and its supporters, remain so. We commit to our own Board and the US supporters that the control and decision making is in their hands as much as they desire it to be."

There is no misunderstanding of the situation at hand. Although the organization is organized separately from the foreign organization, the facts show that you are operating with a complete lack of control and discretion over the distributions you make to the foreign organization that you support. While you say that the American organization is completely independent, the fact remains that the foreign organization makes the decisions and keeps the records regarding distributions.

Your protest included your admission that there were no formal board meetings or minutes kept to remove and replace the officers. You asserted that because "of a cross representation on the Board, not all the members were native English speakers. As a result, it is not unusual that our conversations, correspondence, and even meetings be peppered with phrases in other languages. Keeping minutes in multiple languages would be cumbersome, and our Board Members felt unnecessary. Moreover, as we believe that there is no legal requirement to keep minutes at Board Meetings, we have not done so." Section 1.6001-1(c) of the Regulations requires organizations to retain records that detail their exempt functions. As you have not shown that you have sufficient records to show that your operations exclusively further exempt purposes, you do not meet the operational test. You have no system of record keeping; rather you allow the foreign organization to keep the records on your behalf.

Regarding the lack of financial data that was provided, you say that "knowing that we had previously filed tax returns" that you believed that we had "access to such financial records and did not know what additional records were needed." You further stated that you were awaiting a response from the Service, which never came, regarding this matter. We have no record of such request. You then stated that "at this time we are re-submitting the 2006 tax returns." However, you failed to provide a copy of your tax return.

Regarding the determination of need of the scholarship/stipends that you distribute, you stated that in the foreign country of Y the government has "very stringent policies and lengthy bureaucratic procedures that review the financial status of the students we support. A

significant portion of our determination is not done by individual student but rather by category. Students who have been deemed by government agencies as living below the poverty line and so forth automatically fall into a category of priority need." You go on to state that the "students' cases are reviewed annually by government" and that you "do not have to do our own analysis." This further affirms your lack of review the financial status of the students. Even if these students are indeed classified as needy, you keep no records and require no documentation or verification from the students. Therefore, there is no assurance that your funds are going to support a charitable class.

Your protest included what you purport was a copy of the non-profit documentation of the foreign organization that you support. The document was written in a foreign language and you provided the English translation. The English translation states that the document is for an organization with a different name. It is not documentation for the organization that you say you are supporting. We gave you an opportunity to clarify, but you did not respond to our request.

You acknowledged that there seemed to be a discrepancy in the amount of the stipends provided to the students. You asserted that the amount of the stipend can change based on the value of the US Dollar versus the currency used in the foreign country of Y. You also indicated that the amounts can vary based on availability of funds. If funds are low, the stipends will be smaller and if the funds increase, then the stipends also increase. The stipend amount could vary based on special incentive to students, such as a bonus to perform well on specific exams. You had previously told us that you provide equal stipends to the students. However, you now say that "sometimes we discreetly providing additional funding – based on need". You say that "medical care for the student or immediate family member" is a reason to provide an extra stipend. You asserted that it could be given in the form of a non-interest bearing loan to be repaid at a later date or as a direct gift. You further stated that because of your "desire for discretion and our assurance to such students that other students will not find out about it, we maintain a written rule that all stipends are equal. However, indeed we confirm that in individual cases, we may provide private funding for vital and basic needs for students' survival." These loan activities were not disclosed this prior to your protest of our proposed denial. We have very little information regarding this activity. As you are providing funding to individuals and not keeping adequate records, it can not be concluded that this furthers an exclusively exempt purpose. You have failed to provide enough information to prove to us that you are operating in a manner that would allow for you to qualify for exemption under Section 501(c)(3) of the IRC.

In support of your fund distribution procedures, you stated that "in (Y), it is the standard procedure among education institution like the one we support that distribution of stipends is done in cash." You stated that "our students generally do not have credit cards, and if we distribute stipends in checks, the banks take high fees for transaction such as depositing checks. For that reason, it is standard procedure that as much as possible, funds are distributed in cash. Many legal money changing offices will give leniencies in fees for us to change checks into cash, which is why it is not usually done at the bank." The fact that handing out cash is the "standard procedure" in the foreign country Y does not bring you into compliance with the record keeping requirements of Section 6001 the IRC. This activity illustrates a clear lack of control and discretion of the distributions of your funds.

CONCLUSION AS TO PRIMARY ISSUE:

As to the primary issue depicted on page 1, we conclude that you do not qualify for tax exempt status under IRC 501(c)(3) for the above stated reasons

CONCLUSION AS TO ALTERNATIVE ISSUE:

As to the alternative issue depicted on page 1 of this letter, we conclude that, even if you were subsequently found to qualify for exemption under IRC 501(c)(3) on appeal, you would still not qualify for the deductibility of contributions under IRC 170.

APPEAL RIGHTS AND OTHER PROCEDURES

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements